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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,975	07/14/2003	Mark D. Soll	MER 03-009	8586

33928 7590 02/20/2008
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EXAMINER	
PRYOR, ALTON NATHANIEL	
ART UNIT	PAPER NUMBER
1616	

MAIL DATE	DELIVERY MODE
02/20/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/618,975	Applicant(s) SOLL ET AL.	
	Examiner ALTON N. PRYOR	Art Unit 1616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,2,6,7,10,14 and 17*.
   Claim(s) withdrawn from consideration: *3,4,8,9,11-13,15,16 and 18-63*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Alton N. Pryor
Primary Examiner
Art Unit 1616

Applicant argues that 1) Cleverly teaches oral veterinary formulations and does not teach or suggest spot-on or pour-on formulations comprising nodulisporic acid derivatives 2)Cleverly describes benzyl alcohol as being a preservative rather than crystallization inhibitor as disclosed in instant claims, 3) Meinke does not teach or suggest any spot-on formulations comprising nodulisporic acid derivatives and propylene glycol, 4) Meinke discloses propylene glycol as a possible vehicle for parenteral administration but not as a vehicle for a spot-on-formulation, 5) Meinke does not suggest a crystallization inhibitor.
The Examiner argues that Cleverly teaches or suggests that the prior art disclose formulations (that may include nodulisporic acid derivatives) that can be formulated as pour-ons (see paragraph 175), 2) Note that instant claim is to a composition claim and attached thereto is its utility. In a claim directed to a composition, a statement to its utility has no patentable significance whether it is intended for the composition as a whole or a component thereof. In the instance situation the Applicants state that the benzyl alcohol functions as a preservative in Cleverly rather than as a crystallization inhibitor in instant invention. The Examiner reiterates that Cleverly at paragraphs 186-7 discloses that the inventive formulations, including those containing nodulisporic acid derivatives, may additionally contain additives such as benzyl alcohol (described as being a preservative). The Examiner further reiterates that the utility or function of the benzyl alcohol in Cleverly as it pertains to the instant claims has no patentable. Thus, Cleverly suggests a composition comprising nodulisporic acid plus benzyl alcohol which makes the instant formulation obvious, 3) Meinke in abstract and at page 34 line 8 - page 37 line 23 suggest a composition comprisng nodulisporic acid derivatives and propylene glycol whether the composition is used as a spot-on or an oral formulation has no patentable significance (see Examiner's argument in 2 above). 4) For reply to the Applicant's argument in 4 see Examiner's argument in 2 above. 4) Cleverly discloses a composition comprising nodulisporic acid derivatives that may be used as a spot-on formulation and Meinke discloses the same. Therefore it would have been obvious to combine the arts to arrive at a third composition comprising benzyl alcohol (crystallization inhibitor) plus a nodulisporic acid derivatives. The intended use in the claims has no patentable weight.

The amendment dated 1/18/08 has a new consideration - a crystallization inhibitor system containing a polymeric film-forming agent set forths the new consideration. For this reason the amendment is not entered.